



# SBA Policy Notice

---

**TO:** All Employees

**CONTROL NO.:** 5000-1064

**SUBJECT:** Interim Financing of Third-Party  
Loans by Certified Development  
Companies

**EFFECTIVE:** 8/1/2008

---

## Purpose

The purpose of this Notice is to provide a temporary 6-month modification to the U.S. Small Business Administration (SBA) policy for situations where a Certified Development Company (CDC) is providing interim financing to a Third Party Lender on a loan where the CDC will be providing the second position financing. This will be effective August 1, 2008 and will end on January 31, 2009. SBA Standard Operating Procedure (SOP) 50 10(5)-Lender and Development Company Loan Programs, which will be effective on August 1, 2008, prohibits CDCs from providing interim financing for such transactions. This Notice will temporarily supersede the language in SBA SOP 50 10(5) and allow CDCs to provide interim financing as discussed below.

## Background

Loans under the 504 Loan Program provide permanent or take-out financing. An interim lender (either the Third Party Lender or another lender) provides the interim financing to cover the period between SBA approval of the project and the debenture sale. After the project is completed, the CDC will close the 504 loan. The proceeds from the debenture sale will repay the interim lender for the amount of the 504 project costs that it advanced on an interim basis (SBA SOP 50 10 (5) Subpart C, Chapter 1, Paragraph 3b(1), page 239). The SOP states that “[a]ny experienced, independent source including the third party lender may supply interim financing provided they meet the conditions described in 13 CFR 120.890. A CDC may provide interim financing but only for a project financed by another CDC.”

SBA permits CDCs to provide interim financing on various transactions related to small business lending. The intent of this authority was to allow CDCs to foster long term loans to small businesses. The ability to provide interim financing is not limited to those loans with an SBA component.

SBA has talked to many CDCs and believes that very few CDCs actually provide interim financing on a loan where the CDC is also providing the second position financing. Those CDCs that do provide this financing have told SBA that they provide the interim financing for a number of reasons including the following:

- Because some lenders are reluctant to hold a loan equal to 90 percent of the project financing on their books.

---

**EXPIRES:** 8/1/2009

**PAGE 1 of 3**

SBA Form 1353.1 (12-93) MS Word Edition; previous editions obsolete  
Must be accompanied by SBA Form 58

- Lower costs and less complexity for the borrower.

Some CDCs cite that interim financing enables them to bring more banks into the 504 Program because the bank never has to hold more than 50 percent of the project costs on their books. This is especially helpful for smaller bank participation in the 504 first mortgage market. Through this approach, there may be opportunities for broadening the market for 504 loans, thereby increasing the access to capital for small businesses.

## Issue

SBA believes that a CDC that is providing interim financing on a loan where it also will be providing the second position financing is in a situation that presents the appearance of a conflict of interest. SBA regulations at 13 Code of Federal Regulations (CFR) 120.892 require the following certifications prior to the 504 loan closing: **(a) the interim lender must certify to the CDC that it has no knowledge of any unremedied substantial adverse change in the condition of the small business since the application to the interim lender; (b) The Borrower (or Operating Company) must certify to the CDC that there has been no unremedied substantial adverse change in its financial condition or its ability to repay the 504 loan since the date of application, and must furnish interim financial statements, current within 120 days of closing; and (c) The CDC must issue an opinion to the best of its knowledge that there has been no unremedied substantial adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since its submission of the loan application to SBA.**

If the CDC is acting as the interim lender, it will be certifying to itself that there has been no unremedied substantial adverse change in the condition of the small business. Then, based on its own certification, the CDC will issue an opinion to SBA that there has been no unremedied substantial adverse change that would affect the ability of the borrower to repay the 504 loan. In this situation, if a CDC determined that there was an adverse change in the borrower's financial position, it may be hurting itself financially as the take-out financing that the CDC was expecting would not arrive. SBA does not believe that it is appropriate to put a CDC into this position. However, the Agency also realizes that to immediately suspend this process could have a detrimental impact on the 504 Loan Program.

## Temporary Solution

The following language will supersede the interim financing language in SBA SOP 50 10(5), Subpart C, Chapter 1, Paragraph 3b(1), page 239 for the period of time beginning August 1, 2008 and ending on January 31, 2009:

SBA will permit a CDC to provide interim financing on a loan where the CDC will also provide the second position financing provided that:

- (a) the dollar amount of the interim financing is limited to no more than the debenture amount;

- (b) the maturity of the interim financing does not exceed 120 days;
- (c) any application not processed using Premier Certified Lender Program (PCLP) procedures which includes CDC-provided interim financing must be received at the Sacramento Loan Processing Center on or before January 31, 2009; and
- (d) any application processed using PCLP procedures which includes CDC-provided interim financing must have an approval date in SBA's computer system that is on or before January 31, 2009.

If SBA concludes that the CDC has violated 13 CFR Section 120.854(a)(3) by failing to notify SBA of an unremedied substantial adverse change, SBA may take any of the actions pursuant to the authority in 13 CFR Section 120.855, including but not limited to the following:

- suspension or termination of the CDC's authority to participate in the 504 Program;
- suspension or termination of the CDC's authority to perform underwriting, closing, servicing, liquidation or litigation of one or more 504 loans or to perform any other function in the connection with the 504 Program; and
- suspension or termination of the CDC's participation as an Accredited Lenders Program or PCLP CDC.

In addition, under 13 CFR Section 120.938, SBA may pursue claims against the CDC and its applicable insurance coverages in the event of subsequent default of the loan.

### **Long Term Solution**

SBA cannot permit CDCs to be in a position that would create a conflict of interest or the appearance of a conflict of interest. SBA stands ready to work with the industry during the next 6 months to explore an appropriate solution that helps fulfill one of its core missions to increase small businesses' access to capital, while also maintaining the integrity of the Program.

For further information, please contact A.B. McConnell, Jr., Chief of the 504 Program Branch, at 202-205-7238 or [andrew.mcconnell@sba.gov](mailto:andrew.mcconnell@sba.gov).

---

Jovita Carranza  
Acting Administrator